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JOSHUA DEAN FISH

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

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UNITED STATES OF AMERICA,  Plaintiff,  v.  JOSHUA DEAN FISH,  Defendant.
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Cause No. CR 21-01-H-BMM  <b>DEFENDANT JOSHUA FISH'S ALLOCUTION</b>
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Pursuant to Fed.R.Crim.P. 32(j), the Defendant, JOSHUA DEAN FISH, hereby submits this allocution to assist the Court in determining an appropriate sentence to impose. The sentencing hearing is presently scheduled to occur on September 29, 2018, at 2:30 p.m.

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## ALLOCUTION

**He is as broken as any man could ever be.**

The courtroom is no stranger to grief and the shedding of tears, and those of us involved with the criminal justice system are frequent first-hand witnesses to real-life tragedy. We view the pain of victims and their families on a daily basis. We see the shame and guilt and remorse experienced by defendants at the moment the impact of their actions and their collateral effects suddenly take realization in their lives. We can scarcely fail to notice the sobbing mother or spouse sitting in the gallery as judgment is pronounced. We watch as yet another man is handcuffed and led away in chains to who knows where. We wonder who will care for the condemned person's children or elderly parents. These observations occur so often that they become routine for us, they become quotidian, they become commonplace. And lest we take care, we run the real risk of becoming so calloused and hardened to these circumstances that, like the executioner who loses no sleep after a day's work<sup>1</sup> or the remorseless Nazi upon consideration of the Holocaust,<sup>2</sup> we grow desensitized to them. As the skin thickens over

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<sup>1</sup> 18 U.S.C. § 3596(a).

<sup>2</sup> See, Nuremburg Laws, <https://www.archives.gov/publications/prologue/2010/winter/nuremberg.html>

the days and months and years, so does the loss, little by little, of that necessary ingredient essential to sympathy and empathy – compassion.

However, the “[l]aw is nothing else but the best reason of wise men applied for ages to the transactions and business of mankind.”<sup>3</sup> And sentencing those convicted of crime is a “transaction and business of mankind.” We went to school to become lawyers. Our bailiwick is the courtroom, our tool of the trade is the law, and these routine observations are, after all, only the consequences of the law being followed. Because the law of sentencing requires the convicted to be punished, we can take solace in the fact that our actions are lawful and therefore justified:

O.K.

Just a little pin prick.

There’ll be no more aaaaaaaah!

But you may feel a little sick.<sup>4</sup>

And sometimes we do, even though the law allows to occur that which we just saw happen, as once did the chopping off of heads and the extermination of jews, papists, gypsies, homosexuals, and the handicapped. As this process unfolds, defense counsel is in a unique position to observe as

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<sup>3</sup> Michael Burlingame, *Abraham Lincoln, A Life, Volume One*, p. 352 (citation omitted) (John Hopkins Univ. Press, 2008).

<sup>4</sup> *Comfortably Numb*, The Wall, Pink Floyd (1979).

closely as one might observe something, the *double entendre* of a guilty plea. For the accused it is much deeper than the simple acknowledgment of wrongdoing or the admission that “they got me.” It also carries with it the anguish of a guilty conscience born from recognition of the truth that one has done wrong and caused harm.<sup>5</sup> Obtained without permission in the Garden of Eden,<sup>6</sup> a conscience that is guilty requires the blood of an innocent sacrifice for its cleansing from the curse of culpability.<sup>7</sup> The torment of a guilty conscience can be so intense that, like Lady MacBeth, who tortured by her part in the regicide of Duncan, relief may be found only in suicide.<sup>8</sup> In John Steinbeck’s *East of Eden*, Kate signs her estate over to her son and commits suicide while wracked with guilt and self-loathing because of her evil and “malformed soul.” Sometimes those convicted of a crime such as the one at issue here also find respite in the same manner.<sup>9</sup> What is certain is that the deep anguish and remorse felt from a guilty conscience arises purely as a

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<sup>5</sup> See Josh Fish’s attached letter to the Court.

<sup>6</sup> Gen. 3:5-7.

<sup>7</sup> Gen. 3:21, 22, *cf.*, Heb. 9:14.

<sup>8</sup> William Shakespeare, *MacBeth*, Act V, Scene 8, Line 71.

<sup>9</sup> See, *United States v. Noennig*, CR 13-30-M-DWM, Doc. 403, in which the phrase “[t]he United States has been informed that [the defendant] is deceased” is really prosecutorial code for “the defendant has committed suicide.”

consequence of their own behavior which caused injury to others. It's a moral response to a moral failure that results in great weeping, gnashing of teeth, and the rending of garments.<sup>10</sup> A guilty conscience causes searing internal pain, and we can all be assured that Joshua Fish is suffering that agony now. He likely will for the rest of his life.

There is an evolutionary basis for the offenses committed here, i.e., the natural drive to reproduce and perpetuate the species. That drive is rooted in the biological functions of sexual attraction and desire. Science, music, art, religion, literature and history are replete with countless examples of what happens with sexual attraction and desire when boy meets girl. Science says that sexual desire is driven by testosterone and estrogen, the rewards of which are dopamine, norepinephrine, oxytocin and vasopressin. These hormones create such sexual attractions as “abosexuality” (sexual attraction changes frequently), “allosexual” (have sexual attraction and desire sex),<sup>11</sup> “asexuality (no sexual attraction), “autosexuality (attraction toward oneself), “bisexuality” (attraction to any gender), “demisexual” (attraction to person with whom already formed an emotional bond), “heterosexual” (attracted to the opposite sex), “homosexuality”(attracted to same sex ), “pansexual”

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<sup>10</sup> 1 Kings 21:27; Matt. 8:12; 24:51.

<sup>11</sup> Think Hugh Hefner.

(attracted to anyone regardless of gender identity or types of sexuality), and “sapiosexuality” (sexual attraction to intelligence), to name a few.

In the desire category are things like “frotteurism” (sexual arousal to touching strangers, usually in crowded places), “exhibitionism” (sexual arousal to exposing the genitals to others), “voyeurism” (sexual arousal to surreptitiously viewing others), “transvestism” (sexual arousal to dressing in clothing of the opposite sex), “bondage” (sexual arousal to being bound or tied), “discipline” (sexual arousal to master-slave relationships), “sadism” (sexual arousal to the infliction of pain on others), “masochism” (sexual arousal to the infliction of pain on self). This category also contains “paraphilias,” which is a term for any kind of “deviant” sexual attraction. These include “coprophilia” (sexual arousal to defecation), “hebephilia” (sexual arousal to adolescents), “objectophilia” (sexual attraction to inanimate objects),<sup>12</sup> “necrophilia” (sexual arousal/contact with a dead person or animal), “pedophilia” (sexual arousal to a prepubescent child), “plushophilia” (stuffed animals), “urophilia” (urination), and “zoophilia” (animals).

Contemporary music is fraught with lust and sexual desire. Just a few titles that come to mind are, *Let’s Get it On* (Marvin Gaye), *Unchained Melody* (Righteous Brothers), *Ring of Fire* (Johnny Cash), *I Want to Know*

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<sup>12</sup> Such as Michelangelo’s statue of David.

*What Love Is* (Foreigner), *I'm on Fire* (Bruce Springsteen), *Paradise by the Dashboard* (Meatloaf), *If You Wanna be my Lover* (Spice Girls), and *Don't Stand So Close to Me* (the Police). They also include the bad aspects of lust and desire, such as adultery, *That Ain't my Truck* (Rhett Atkins), *Lucille* (Kenny Rogers), *Thunder Rolls* (Garth Brooks) and jealousy, *Every Breath you Take* (the Police), *How Long Has This Been Goin' On?* (Ace).

Art similarly contains plenty of lust and sexual desire, as depicted by the numerous paintings of the biblical account of *Susanna and the Elders* painted by Rembrandt, Picasso, Millet, Tintoretto, and Pierre Van Hanselaere, whose paintings are found in the Louvre and the Prado, or *Lot and his Daughters*.

In the Old Testament, David was walking on his rooftop when he spotted Bathsheba bathing nearby. She was a beautiful woman and the wife of Uriah the Hittite, one of David's mighty men. Despite that, David lusted for her, had her brought to the palace, and "lay with her." She became pregnant with David's child. After David's machinations to cover his misdeed failed, he sent Uriah to the front lines of battle where he was killed in battle after David instructed his men to withdraw so as to leave Uriah exposed to the enemy. Bathsheba then married David and gave birth to a son. "But the

thing David had done was evil in the sight of the Lord.”<sup>13</sup>

In another of Steinbeck’s novels, *Of Mice and Men*, Lenny Small is instantly attracted to Curley’s pretty and flirtatious wife, but kills her when she lets him stroke her hair by accidentally breaking her neck after she yells at him for “mussing it all up” and then struggles to get away.

In *Amok Time*,<sup>14</sup> Spock is undergoing “pon farr,” a biological condition that Vulcan males experience periodically throughout their adult lives which amounts to extreme lust for which they must either mate or die. Spock was bonded as a child with a Vulcan female named T’Pring, so the Enterprise warps to the planet Vulcan where Spock proposes to mate with T’Pring. She does not want Spock as a mate, however, and invokes a procedure involving a fight to the death by which she can choose another mate. T’Pring then tricks Captain Kirk into fighting Spock. During the fight Spock garrotes Kirk with an “ahn’woon,” a Vulcan weapon. Doctor McCoy rushes to Kirk’s body, declares him dead, and requests immediate transport back to the Enterprise. Thinking he had killed Kirk, Spock loses all desire for T’Pring and returns to the Enterprise intending to resign his commission as a Star Fleet officer and

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<sup>13</sup> 2 Sam. 11:27.

<sup>14</sup> Star Trek, Second Season, Episode 1.



submit himself for trial for killing Kirk.<sup>15</sup> Fortunately for both Spock and Kirk, Dr. McCoy gave Kirk an injection of a neuromuscular drug that merely simulated Kirk's death.

History is full of examples of older men marrying and having sexual relationships with younger girls. Ezekiel 16:8 says that a girl is ready for marriage when she reaches puberty, which in most cases is around the age of 12 years. In Numbers 31:17-18, Moses tells his men that after a battle it is permissible to take virgin girls as wives. *Cf.*, Deut. 21:10-14. Isaac was 40 years old when he married Rebekah, a virgin. Gen. 24:15, 16; 25:20. Closer to home, Pocahontas was 16 years old when she married a 29-year-old John Rolfe – a 13 year difference in age. The age difference between Françoise Gilot and Pablo Picasso was 40 years. Former President Donald Trump married Melania Trump when he was 58 years old and she was 34 – an age difference of 24 years. And the list goes on and on.<sup>16</sup> From a historical perspective, the age difference between Fish and the various girls involved in this case is not out of the ordinary.

The point of this discussion is that uncontrollable sexual attraction and

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<sup>15</sup> Left unanswered by the writers of this episode was why Spock did not die after failing to mate.

<sup>16</sup> Think, again, Hugh Hefner and Crystal Harris, a 60-year difference, or Frank Sinatra and Mia Farrow, a 30-year difference.

desire is an enormous part of humanity and American culture. It is who and what we are. How is it that Spock, a Vulcan who followed the path of pure logic, was completely overcome by uncontrollable lust? Or David, God's anointed, manipulated the death of Uriah the Hittite? Josh Fish's unlawful conduct was motivated entirely by biology and was completely uncharacteristic of somebody who had otherwise led a lawful and productive life.

Josh was born in Boulder, Colorado, where he lived until he was about three years old at which time his family moved to Helena. He lived in Helena from 1996 until about 2012 when he moved to Missoula to attend college at the University of Montana. After graduation in 2017, he moved to Gilbert, Arizona, and worked there doing merger and acquisition investment banking.

His father, Dean Fish, is 58 or 59 years old. Dean works at Boeing as a manager in a machine shop. His mother is Cynthia Fish and she is the same age as Dean. Cynthia owns a janitorial service in Helena and cleans houses for a living. Dean and Cynthia were married for approximately 30 years, but they divorced in 2015. Josh has a 22 year-old sister who works as a traveling certified nurse's assistant. Josh has a good relationship with his parents and his sister. Before the current charges were filed Josh had a girlfriend, Kylie

Myers, for 6 or 7 years. Kylie is a fourth grade teacher in Arizona.<sup>17</sup>

Josh was raised in a lower-to-middle income family in a Christian household. He had a normal childhood. His home life was happy. He attended church at the Hannaford Street Baptist Church. Pictures of Josh's childhood are attached and attest to a happy childhood.

He attended the Helena Christian School during his elementary grades and then C.R. Anderson Middle School. During this time he was sexually abused by an older neighbor boy. He did well throughout elementary and middle-school and played sports and earned good grades. He attended Capital High School and was consistently on the honor roll, graduating in 2012. He was a pitcher on his baseball team until the eighth grade, and then he played football, basketball and ran track in high school. When he was a sophomore in high school Josh received the Coaches' Award for basketball. He had close friends, was popular, and had a good social network. He was voted the most-outgoing person in high school. He didn't have substance abuse issues. He had his first serious girlfriend in his senior year in high school.

Josh then attended the University of Montana in Missoula, and

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<sup>17</sup> Josh and Kylie are still close, but the reality of their situation is that they will never be together.

graduated in 2017 with a degree in Business Administration Finance. While in college Josh interned at Ameriprise Financial in Missoula as an assistant financial planner. Before that he was a part-time teller at First Security Bank in Missoula, a food preparer by a catering company located on the University of Montana campus, and he also worked at Walmart.

After graduation from the University of Montana Josh worked at Dinan & Company in Phoenix, Arizona. He was an associate banker.

Josh is healthy and has no physical problems, although he broke his back during his sophomore year while playing football when he got hit in the back with a helmet. On another occasion he was knocked out during a dirt bike race. Josh takes Prilosac for heartburn.

Josh is currently experiencing more than normal anxiety because of his bleak future outlook. He has also been depressed for the last three or four years because he has been looking at pornography and hiding it. He has never undergone any counseling for his attraction or addiction to pornography.

Josh has no criminal history.

As stated above, Josh was sexually abused by an older neighbor boy between the ages of 8 and 10 years of age. He then began looking at the Sports Illustrated Swimsuits edition and he would also look at Playboy

magazines. He eventually got involved in looking at pornography on the Internet. In 2006 or 2008 while in middle school he developed an addiction. That was the beginning of behavior that led to the present charges and convictions.

Josh was completely cooperative when first approached by law enforcement. He was actually relieved and accepted full responsibility for his conduct, assisting agents in the recovery of evidence that would bury him in this case.

The Court is charged with the task of imposing a sentence that is sufficient, but not greater than necessary to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment, deter criminal conduct, protect the public, and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. 18 U.S.C. § 3553(a). When making that determination the Court must consider the nature and circumstances of the offense as well as the history and characteristics of the defendant. When creating the Sentencing Guidelines, the Sentencing Commission decided to pile on enhancement after enhancement with the goal of increasing punishment. In this case Josh Fish has a total offense level of 41 and a criminal history category of I, for a guideline imprisonment range between

324 and 405 months after the piling on of enhancement after enhancement.

The minimum term of imprisonment is 15 years.

In this process the Court is called upon to be the wisest of all men, because it must decide the right thing to do. The Court bears ultimate responsibility for both wielding and staying the sword of punishment, making the victims whole, and mending the problem through rehabilitation. Like defense counsel, the Court will observe the consequences of its decision on this man and his family. Condemning him to a sentence of imprisonment for 27 years is much greater than necessary under the circumstances of this case. It certainly is not a circumstance that Dean and Cynthia contemplated as they looked happily into their newborn son's face. Josh is entitled to a variance from the Sentencing Guidelines range. Significantly, he has no prior criminal history, he has substantial family support, and he has a stable employment history. He has shown extraordinary acceptance of responsibility. The Guideline range overstates the severity of his conduct. The Guideline range also amounts to unfair disparate treatment to other similarly situated Defendants. For example, in *United States v. Richard Saari*, CR 16-01-H-CCL, the defendant was charged 10 counts of Sexual Exploitation of children in violation of 18 U.S.C. § 2251(1)(a) and one count of Receipt of Child Pornography in violation of 18 U.S.C. § 2252(a)(2). Saari was

33, while Fish was 26 and younger than Saari when he engaged in the conduct at issue here. Saari sought out and found multiple younger girls online using social media, and had hands-on sexual relationships with at least four of his victims which he recorded. Yet the Government allowed Saari to plead to one count of the receipt of child pornography count and dismissed the ten sexual exploitation counts. Saari's total offense level was 31 and he ultimately received a sentence of 135 months. In this case the Government proposes to sentence Josh Fish to 15 more years than it did Saari even though Fish's conduct was less severe. The Government's advocacy of 15 more years than Saari received will not promote respect for the law nor will it deter others from engaging in similar conduct.

The exercise of pity, mercy, and the hope of rehabilitation is more appropriate than punishment and retribution in this case. Attached are letters to the Court from Josh's friends and family members. They attest that Josh is an utterly broken man, full of anguish and remorse for his actions which have caused him to lose everything that he values and holds dear. For Josh Fish there will be no marriage, children or family, or any prospect for a normal life. He has utterly lost everything. As a matter of lenity, as a matter of humanity, and as a matter of compassion, Josh requests that the Court sentence him to 180 months. That is the mandatory minimum sentence, and

it is a long, long time to be incarcerated. That is a sentence that would satisfy the sentencing goals of § 3553 and is sufficient, but not greater than necessary.

He also requests the Court to recommend placement at Sheridan, Oregon, because it is close to his family, and for participation in the RDAP.

DATED this 14<sup>th</sup> day of September, 2021.

By: s/ Palmer Hoovestal  
Palmer A. Hoovestal, Esq.  
Attorney for Defendant  
JOSHUA DEAN FISH



**CERTIFICATE OF SERVICE**  
**L.R. 1.4(c)(2)**

I hereby certify that on September 14, 2021, a copy of the foregoing document was served on the following persons by the following means:

1, 2 CM-ECF

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\_\_\_ E-Mail

1. CLERK, UNITED STATES DISTRICT COURT

2. CYNDEE PETERSON  
Assistant United States Attorney  
Counsel for the United States of America

3. JOSHUA DEAN FISH  
Defendant

By: s/ Palmer Hoovestal  
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